

## Department of Veterans Affairs

## § 3.401

by evidence of record that competency was regained.

(z) *Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202).* (1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:

(i) November 23, 1977.

(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.

[26 FR 1593, Feb. 24, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.400, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### § 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) *Aid and attendance and housebound benefits.* (1) Except as provided in § 3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established.

(Authority: 38 U.S.C. 501; 5110(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary.

(Authority: 38 U.S.C. 501)

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need

for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established.

(Authority: 38 U.S.C. 501; 5110(b)(1), (2))

(b) *Dependent, additional compensation or pension for.* Latest of the following dates:

(1) Date of claim. This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event; otherwise.

(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Department of Veterans Affairs request.

(2) Date dependency arises.

(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action.

(Authority: 38 U.S.C. 5110(f))

(4) Date of commencement of veteran's award. (Other increases, see § 3.400(o). For school attendance see § 3.667.)

(Authority: 38 U.S.C. 5110 (f), (n))

(c) *Divorce of veteran and spouse.* See § 3.501(d).

(d) *Institutional awards (§ 3.852)—(1) Chief officer of non-Department of Veterans Affairs hospital or institution.* From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

NOTE: If apportionment under §§ 3.452(c) and 3.454 is in order or payment under § 3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.

(2) *Director of a Department of Veterans Affairs medical center or domiciliary.* From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.

(e) *Retirement pay (§ 3.750)—(1) Election.* Date of entitlement if timely

### § 3.402

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filed. Subject to prior payments of retirement pay.

(2) *Waiver*. Day following date of discontinuance or reduction of retirement pay.

(3) *Reelection*. Day the reelection is received by the Department of Veterans Affairs.

(f) *Service pension* (§ 3.3(a)). Date of receipt of claim.

(g) *Tuberculosis, special compensation for arrested*. As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide compensation payable at a rate less than \$67. See § 3.350(g).

(h) *Temporary increase “General Policy in Rating,” 1945 Schedule for Rating Disabilities—(1) Section 4.29 of this chapter*. Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

(2) *Section 4.30 of this chapter*. Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).

(i) *Increased disability pension based on attainment of age 78*. First day of the month during which veteran attains age 78.

[26 FR 1594, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 36 FR 4599, Mar. 10, 1971; 39 FR 17222, Mar. 14, 1974; 41 FR 36493, Aug. 30, 1976; 41 FR 55874, Dec. 23, 1976; 41 FR 56804, Dec. 30, 1976; 45 FR 34886, May 23, 1980; 54 FR 34981, Aug. 23, 1989; 62 FR 5529, Feb. 6, 1997]

### § 3.402 Surviving spouse.

Awards of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be effective as follows:

(a) *Additional allowance of dependency and indemnity compensation for children* § 3.5(e). Commencing date of surviving spouse's award. See § 3.400(c).

(b) *Legal surviving spouse entitled*. See § 3.657.

(c) *Aid and attendance and housebound benefits*. (1) Date of receipt of claim or date entitlement arose whichever is later. However, when an award of dependency and indemnity compensation (DIC) or pension based on an original or reopened claim is effective for a period prior to date of receipt of the

claim, any additional DIC or pension payable to the surviving spouse by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established.

(Authority: 38 U.S.C. 501; 5110(d))

(2) Date of departure from hospital, institutional or domiciliary care at Department of Veterans Affairs expense. This is applicable only to aid and attendance benefits. Housebound benefits may be awarded during hospitalization at Department of Veterans Affairs expense.

(Authority: 38 U.S.C. 501)

[45 FR 34887, May 23, 1980]

### § 3.403 Children.

(a) Awards of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be effective as follows:

(1) *Permanently incapable of selfsupport* (§ 3.57(a)(3)). In original claims, date fixed by §§ 3.400(b) or (c) or 3.401(b). In claims for continuation of payments, 18th birthday if the condition is claimed prior to or within 1 year after that date; otherwise from date of receipt of claim.

(2) *Majority* (§ 3.854). Direct payment to child if competent, from date of majority or, date of last payment, whichever is the earlier date.

(3) *Posthumous child*. Date of child's birth if proof of birth is received within 1 year of that date, or if notice of the expected or actual birth meeting the requirements of an informal claim, is received within 1 year after the veteran's death; otherwise, date of claim.

(Authority: 38 U.S.C. 5110(n))

(4) *School attendance*. (See § 3.667.)

(5) *Adopted child*. Date of adoption either interlocutory or final or date of adoptive placement agreement, but not earlier than the date from which benefits are otherwise payable.

(b) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran* (§ 3.814). An award of the monetary allowance under 38 U.S.C. 1805 to a child